

FILED

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

APR 14 2004

U.S. BANKRUPTCY COURT
BY V DEPUTY

IN RE:

JOHN TAYLOR CONDIT
Debtor

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Cause No. 03-57256-LMC-7
Chapter 7

pd w/ \$ 85376
150

MOTION FOR RELIEF FROM AUTOMATIC STAY
FILED BY WASHINGTON MUTUAL BANK, F.A.

TO THE HONORABLE LEIF CLARK, UNITED STATES BANKRUPTCY JUDGE:

NOW COMES WASHINGTON MUTUAL BANK, F.A. F/K/A BANK UNITED ("Washington Mutual"), a creditor and party in interest in this bankruptcy case, and files this Motion for Relief from Automatic Stay so that Washington Mutual may exercise its rights available to it by virtue of its judgment lien against certain assets of the bankruptcy estate, and in support of such Motion would respectfully show the Court as follows:

JURISDICTION

1. This Court has jurisdiction of this matter pursuant to 28 U.S.C. Section 1334, 28 U.S.C. Section 157, and 11 U.S.C. Section 362.

FACTS AND ARGUMENTS IN SUPPORT OF MOTION

2. John Taylor Condit ("Debtor") filed this Chapter 7 proceeding on December 24, 2003.

3. The Debtor, along with his brothers, Jeffrey Condit and Paul J. Condit II (aka "Jim Condit"), and his father, Paul J. Condit, were all guarantors on three original notes to Washington Mutual that were executed by Texas Equipment Company, Inc. ("Texas Equipment") on June 24, 1999 and February 15, 2000. Washington Mutual sued each of the individual debtors in connection with their guaranties of the debt of Texas Equipment in the United States District Court for the

ORIGINAL

Northern District of Texas before the Honorable Sam Cummings: *Washington Mutual Bank, F.A. v. Jeffrey Condit, Paul Condit, John Condit, and Paul Condit, II, Cause No. 5:01CV0250-C: United Stated District Court for the Northern District of Texas, Lubbock Division*, where judgment was rendered against them, jointly and severally, in the amount of \$6,730,472.03, on February 27, 2002 (the “Judgment”).

A. Post Judgment Discovery and Request for Appointment of Receiver and Turnover

4. In the course of post-judgment discovery taken in the case, Washington Mutual learned that the Debtor owned or controlled numerous corporations and limited partnerships that, in turn, owned or controlled at least fourteen apartment complexes in four different states. It also discovered that the Debtor owned stock in closely held corporations with his brothers and father. Its discovery further revealed that the cornerstone of John T. Condit’s asset protection scheme was an entity known as Domicile Property Management, Inc. (“DPMI”), and that the Debtor was DPMI’s president, sole director, and shareholder. The corporations and limited partnerships that were all effectively controlled by the Debtor, hired DPMI to manage their real property. Under the management agreements, the majority of the profit from each property was effectively funneled to DPMI and, ultimately to the Debtor or one of his other business enterprises.

5. Because of the difficulties presented in executing on its Judgment against John T. Condit, Washington Mutual was forced to file an Application for Turnover and Appointment of Receiver on March 6, 2003.

B. Turnover Granted and Receiver Appointed:

6. On April 10, 2003, after notice and hearing, the U.S. District Court granted Washington Mutual’s Application for Turnover and Appointment of Receiver and Fernando Bustos was appointed Receiver for John T. Condit (“Turnover Order”). The Receiver’s appointment became

effective on April 15, 2003 when he filed an oath with the Court and posted a \$1,000 bond. The court, in its Turnover Order, identified 20 assets and property interests of John T. Condit to be nonexempt and not readily subject to ordinary execution, and directed the Debtor to execute any and all documents necessary to convey title to the specifically designated assets and property interests, which are more particularly listed and described as follows:

- a. Domicile Property Management, Inc., consisting of a 100% stock ownership interest;
- b. Domicile Investment Group, Inc., consisting of a 100% stock ownership interest;
- c. Condit Family, Inc. consisting of a 49% stock ownership interest;
- d. Affordable Asset Development, Inc., consisting of a 1/3rd stock ownership interest;
- e. Houston Street Redevelopment, Inc., consisting of a 50% stock ownership interest;
- f. Fowler Square, Inc., consisting of 1/3rd stock ownership interest;
- g. Little Rock Willow Creek, Inc., consisting of a 1/3rd stock ownership interest;
- h. Palestine Apartments, Inc., consisting of a 1/3rd stock ownership interest;
- i. Britt Hills, Inc., consisting of a 1/3rd stock ownership interest
- j. Sitka Investment Corp., consisting of a 1/3rd stock ownership interest;
- k. Blake Lee Arthur Development, L.L.C., consisting of a 75% membership interest;
- l. Condit Agribusiness, Inc., consisting of an unknown stock ownership;
- m. Condit Brothers of Texas, Inc., consisting of a 40% stock ownership interest;
- n. Alpha SemTex, Inc., consisting of a 40% stock ownership interest;
- o. Beta SemTex, Inc., consisting of a 1/3rd stock ownership interest;
- p. Gamma SemTex, Inc., consisting of a 20% stock ownership interest;

- q. Gaines County Equipment Leasing, Inc., consisting of a 1/3rd stock ownership interest
- r. John T. Condit Number One Limited Partnership, consisting of a 49½% interest
- s. Britt Oak, Ltd., consisting of a 1/3rd interest; and
- t. Three J Farms, consisting of a 1/3rd partnership interest.

7. On July 17, 2003, the Receiver, after having conducted a 4-month investigation into the affairs of John T. Condit, filed his Ex Parte Motion of Receiver For Authority to Employ Property Management Company to Assume Management Operations of Domicile Property Management, Inc. ("DPMI") and For Related Orders to Protect Value of Associated Assets. The court immediately granted the Motion allowing the Receiver to vote the DPMI stock and displace John T. Condit as the sole director and chief operating officer of DPMI. The Lubbock District Court also put into place a Restraining Order prohibiting John T. Condit, or anyone acting in concert with him, from taking actions that would diminish the value of DPMI or the other assets that were the subject of the Turnover Order. The Court's order also directed the Debtor and any person acting in concert with him to immediately provide full access to the Receiver to all right, title and interest of the Debtor in the specifically listed assets.

8. On July 24, 2003, the Receiver, acting pursuant to the authority vested in him by the U.S. District Court for the Northern District of Texas, accompanied by two U.S. Marshals, executed the order upon the Debtor at the headquarters of DPMI located at 601 Howard in San Antonio, Texas. Such process was documented and filed with the U.S. District Clerk by the United States Marshals Service on August 15, 2003.

9. Following a hearing held by the U.S. District Court on August 5, 2003 to consider the Receiver's request for a preliminary injunction, the Judge entered its order on August 11, 2003, granting the Receiver continued authority to use McDougal Properties, L.L.C. ("McDougal"), which is located in Lubbock, to operate DPML and put in place a preliminary injunction to protect the value of the assets, due to improper actions by the Debtor through the use of DPML.

10. Since that time the Receiver has been operating DPML, and has been authorized by the Court to pay all of the costs associated with McDougal's operations, pay himself and his firm all attorneys' fees and costs, reimburse Washington Mutual for all of its attorneys' fees and costs, and then to begin making quarterly payments to Washington Mutual to apply against its judgment upon appropriate motion and order of the Court

11. Washington Mutual asserts that as a result of the appointment of the Receiver and the issuance and execution of the Turnover Order that it holds a perfected judgment lien against all of the assets of the Debtor listed in the Turnover Order.

12. Although John T. Condit had been specifically ordered to convey title to the assets referenced by the April 10, 2003 Order of the U.S. District Court for the Northern District of Texas, Lubbock Division, to facilitate their liquidation, he did not do so until November 14, 2003, following the entry of an Order adjudicating John T. Condit to be in contempt of the Lubbock U.S. District Court for failing to transfer the property interests set forth in the Receivership Order and ordering him to pay the sum of \$1,000.00 per day until he complied with such Order.

13. On November 14, 2004, the Debtor executed Bills of Sale on each of the listed assets conveying all of his right, title and interest to the 20 assets listed in the Turnover Order to the Receiver.

C. Bankruptcy Filed by Debtor:

14. John T. Condit filed a voluntary petition under Chapter 7 of the Bankruptcy Code in the Western District of Texas, San Antonio Division on December 24, 2003 under Cause No. 03-57256-C, In re: John T. Condit aka John Taylor Condit, thereby invoking the automatic stay provisions of 11 U.S.C. Section 362.

D. Argument in Support of Motion for Relief from Stay

15. Washington Mutual has a claim against the Debtor and his bankruptcy estate in the form of the balance owing on its Judgment as of December 24, 2003, of \$6,132,871.24. This claim is secured by Washington Mutual's judgment lien against the 20 assets listed in the Turnover Order by virtue of the actions of the Receiver appointed pursuant to the provisions of Section 31.002 of the Texas Civil Practice and Remedies Code.

16. Currently pending before the Court and set for hearing on August 14, 2004, is the Motion of Washington Mutual Bank to Retain the Receiver along with its Motion to Abstain. By the relief sought in the Motion to Retain the Receiver, Washington Mutual seeks to continue to use the services of the Receiver to operate DPMI and produce a revenue stream to apply against its Judgment. Washington Mutual also seeks to employ the services of the Receiver to take all necessary actions to liquidate the other assets listed in the Turnover Order and apply the proceeds realized from such liquidation to the Judgment. By virtue of the relief it is now seeking in this Motion to Lift the Automatic Stay, Washington Mutual seeks authority to take all actions that may be necessary to pursue remedies that may be available to it through use of the Receiver and any motions or pleadings that it or the Receiver may deem necessary in the U. S. District Court for the Northern District of Texas, Lubbock Division, or any other courts of competent jurisdiction.

17. Debtor has filed his bankruptcy as a Chapter 7, and, thus the assets subject to the

judgment lien of Washington Mutual are not necessary for an effective reorganization.

18. Further, there is no equity available to the bankruptcy estate in the assets listed in the Turnover Order because the balance owing on the Judgment of Washington Mutual exceeds the value of the assets.

19 Since the assets listed in the Turnover Order are not necessary to an effective reorganization, and there is no equity in such assets available for the benefit of the bankruptcy estate, the automatic stay should be lifted pursuant to 11 U.S.C. Sec. 362(d)(2), and Washington Mutual should be permitted to continue to employ the services of the Receiver appointed by the U.S. District Court for the Northern District of Texas and pursue any other remedies that may be available to it or the Receiver by legal process or otherwise.

20. Washington Mutual asserts that the assets that are subject to the Turnover Order will not be adequately protected unless the Receiver remains in possession of them and continues to operate DPMI and continues his efforts to liquidate the other assets. Washington Mutual asserts that should the Chapter 7 Trustee have possession of the assets subject to the Turnover Order delivered to him pursuant to the provisions of 11 U.S.C. Section 543(a) and (b) that such assets would deteriorate in value and impair its interest in them. As a consequence, Washington Mutual asserts that the automatic stay should be lifted in accordance with the provisions of 11 U.S.C. Section 362(d)(1).

PRAYER

WHEREFORE, PREMISES CONSIDERED, Washington Mutual prays that after adequate notice and opportunity for hearing under the circumstances that the Bankruptcy Court enter an order lifting the stay pursuant to the provisions of 11 U.S.C. § 362(d) of the Bankruptcy Code so that Washington Mutual may take any and all actions necessary to continue to employ the services of the Receiver appointed by the U.S. District Court for the Northern District of Texas, Lubbock Division,

to operate DPMI and liquidate the other assets listed in the Turnover Order. Washington Mutual further seeks authority to take all actions that may be necessary to pursue remedies that may be available to it through use of the Receiver and to file any motions or pleadings that it or the Receiver may deem necessary in the U. S. District Court for the Northern District of Texas, Lubbock Division, or any other courts of competent jurisdiction in order to carry out the purposes of the Turnover Order, and Washington Mutual seeks such other and further relief as the Court may deem necessary and proper.

Respectfully Submitted,

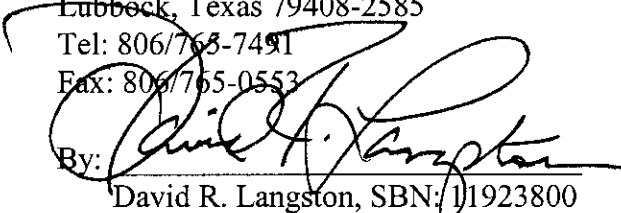
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By: 
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Attorneys for Washington Mutual Bank, F.A.

CERTIFICATE OF SERVICE

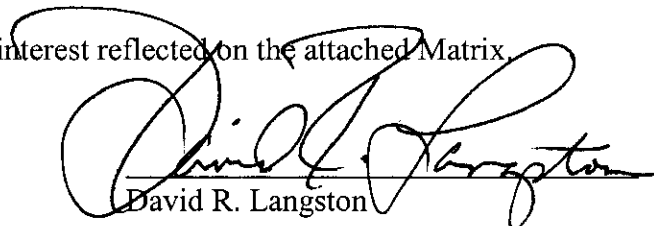
I hereby certify that on this 9th day of April, 2004, a true and correct copy of the foregoing Motion for Relief of Automatic Stay was mailed first class, U.S. Mail, postage prepaid, to the following parties in interest:

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2. Randolph Osherow
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Chapter 7 Trustee

3. All creditors and parties in interest reflected on the attached Matrix.


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